

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/05-01/08**

Date: **4 November 2009**

TRIAL CHAMBER III

Before: Judge Adrian Fulford, Presiding Judge
Judge Elisabeth Odio-Benito
Judge Joyce Aluoch

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

Public

**Prosecution's submission of its "Summary of Presentation of Evidence"
Confidential, *Ex Parte*, Prosecution and Defence only Annexes A and B**

Source: The Office of the Prosecutor

Document to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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Introduction

1. At the status conference of 7 October 2009, Trial Chamber III (“the Chamber”) requested the Office of the Prosecutor (“the Prosecution”) to file a summary of the presentation of its evidence by 4 November 2009.¹ The Chamber requested that the document provide an explanation of its case, by reference to the witnesses it intends to call and other evidence it intends to rely upon and how the evidence relates to the charges.² The Prosecution herewith submits its summary of presentation of evidence and related annexes.

Request for confidentiality

2. The Prosecution requests that Annexes A and B appended to this submission, be received by the Chamber as “Confidential, *Ex Parte*, Prosecution and Defence Only” because they contain confidential information pertaining to witnesses known to the Defence but not to the Public. This request is made to protect witnesses and victims pursuant to Article 68(1) of the Rome Statute (“the Statute”) and Rule 81(4) of the Rules of Procedure and Evidence. The Prosecution will file a public redacted version as soon as practicable.

Appended Annexes

- a. **Annex A:** Prosecution’s Summary of Presentation of Evidence, Confidential, *Ex Parte*, Prosecution and Defence only;
- b. **Annex B:** List of Evidence, Confidential, *Ex Parte*, Prosecution and Defence Only;

¹ ICC-01/05-01/08-T-14-ENG, p. 12, lines 18-25 and p. 13, lines 1-3.

² ICC-01/05-01/08-T-14-ENG, p. 12, lines 18-25 and p. 13, lines 1-3.

Summary of Presentation of Evidence

3. The Prosecution provides the summary of presentation in accordance with the Chamber's instruction to facilitate the fair and expeditious conduct of the trial and to provide adequate and timely notice of its case against the accused, including the particular details it will rely upon to prove its case.

4. The document's structure reflects: (i) the contextual background and facts of the case including those related to Articles 7 and 8 chapeau elements of the Statute; (ii) BEMBA's criminal responsibility under Article 28(a) of the Statute; and (iii) the individual crimes charged and the impact of these crimes on victims in the Central African Republic.³ The Prosecution refers to its witnesses in the summary by codes rather than their actual names.⁴

5. All the evidence relied upon by the Prosecution in its summary are referenced by Evidence Registration Number ("ERN number") rather than Evidence Numbers ("EVD numbers") since some items have not yet been assigned EVD numbers.

6. The Prosecution has referenced in its summary the evidence that it presently intends to rely upon at trial. The Prosecution does not intend that this summary restrict its ability to introduce additional evidence to prove its case. To that point, Articles 54(1)(a) and (b) of the Statute, as well as the Appeals Chamber's Judgment in the *Lubanga* case collectively authorize the continuation of the investigation beyond the confirmation of charges.⁵ As the Appeals Chamber noted, "the duty to establish the truth is not limited to the time before the confirmation hearing. Therefore, the

³ The Prosecution included a limited number of materials disclosed by the defence prior to the confirmation hearings. These items are identified by the marker: CAR-DEF.

⁴ The Prosecution appends a separate list that stipulates the witness names and their corresponding codes.

⁵ *Prosecutor v. Lubanga*, "Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled Decision Establishing General principles Governing Applications to Restrict Disclosure pursuant to Rules 81(2) and (4) of the Rules of Procedure and Evidence" 13 October 2006, ICC-01/04-01/06-568, paras. 2 and 52.

Prosecution must be allowed to continue its investigations beyond the confirmation hearing if this is necessary to establish the truth.”⁶



Luis Moreno-Ocampo, Prosecutor

Dated this 4th Day of November 2009

At The Hague, The Netherlands

⁶ Ibid, para. 52